

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

STATE OF WEST VIRGINIA, ex rel.,

G. ISAAC SPONAUGLE, III,
West Virginia citizen and taxpayer,
Petitioner,

v.

Civil Action Number: 18-P-442
Honorable Charles E. King, Judge

JAMES CONLEY JUSTICE, II,
Governor of the State of West Virginia,
Respondent.

PETITIONER'S RESPONSE TO RESPONDENT'S MOTION TO DISMISS

Comes now your Petitioner, G. Isaac Sponaugle, III, a West Virginia citizen and taxpayer, and moves that Respondent's Motion to Dismiss, pursuant to Rule 12(b) of the West Virginia Rules of Civil Procedure, be denied. In support of this motion, Petitioner states the following:

- 1) Petitioner, as set forth in detail in the Memorandum in Support of Petition for Writ of Mandamus that has been previously filed with the Court, is entitled to a writ of mandamus as a matter of law.
- 2) The West Virginia statutory and constitutional duty for the Governor of the State of West Virginia to "reside" can neither be described as "nebulous" nor labeled as "discretionary". It can be accurately described as precise and mandatory.

Law Regarding Residency

West Virginia case law about residency and domicile dates to 1888. In *White v. Tennant*, 31 W.Va. 790, 8 S.E. 596, 597, the Court stated: "Two things must concur to establish domicile,--the fact of residence, and the intention of remaining. These two must exist, or must have existed, in combination.... The character of the residence is of no importance; and if domicile has once existed, mere temporary absence will not destroy it, however long continued."

"The question of residence is one of intention, and the old residence is not considered as lost or abandoned as long as the *animus revertendi* remains." *Maslin's Executors v. Hiett*, 37 W.Va. 15, 16 S.E. 437, 439 (1892). The Supreme Court further elaborated in *State ex rel. Linger v. County Court of Upshur County*, 150 W.Va. 207, 144 S.E.2d 689, 702-703 (1965):

"Two fundamental elements are essential to create a residence, and these elements are: (1) Bodily presence in a place. (2) The intention of remaining in that place. Residence is thus made up of fact and intention, the fact of abode and the intention of remaining, and is a combination of acts and intention. Neither bodily presence nor intention alone will suffice to create a residence. There must be a combination and concurrence of these elements and when they occur, and at the very moment they occur, a residence is created." ... A person is not considered to have lost his residence when he leaves his home and goes into another state, territory or county, for temporary purposes merely, with the intention of returning.... A person does not lose his residence by leaving it with an uncertain, indefinite, half-formed purpose to take up residence elsewhere, and until his purpose to remain has become fixed, he does not abandon his former residence.

The aforesaid basic concepts in law have been reiterated many times by the Supreme Court of Appeals of West Virginia. E.g., *Shaw v. Shaw*, 155 W.Va. 712, 187 S.E.2d 124, 127 (1972); *Ward v. Ward*, 115 W.Va. 429, 176 S.E. 708 (1934). Accord, *State-Planters Bank and Trust Company v. Commonwealth*, 174 Va. 289, 6 S.E.2d 629, 632 (1940); *White v. Manchin*, 173 W.Va. 526, 318 S.E.2d 470, 482 (1984).

Mandatory Duty to Reside at the Seat of Government

Section 20 of Article VI of the West Virginia Constitution provides as follows:

6-20. Seat of government.

The seat of government shall be at Charleston, until otherwise provided by law.

Section 1 of Article VII of the West Virginia Constitution provides as follows:

7-1 Executive department.

The executive department shall consist of a governor, secretary of state, auditor, treasurer, commissioner of agriculture and attorney general, who shall be ex officio reporter of the court of appeals. Their terms of office shall be four years, and shall commence on the first Monday after the second Wednesday of January next after

their election. They shall reside at the seat of government during their terms of office, keep there the public records, books and papers pertaining to their respective offices, and shall perform such duties as may be prescribed by law.

W.Va. Code § 6-5-4 provides as follows:

§6-5-4. Residence of officers.

The Governor, Secretary of State, state superintendent of free schools, Auditor, Treasurer, Attorney General and Commissioner of Agriculture, shall reside at the seat of government during their term of office, and keep there the public records, books and papers pertaining to their respective offices. Every judge of a circuit court shall, during his continuance in office, reside in the circuit for which he was chosen. Every county and district officer, except the prosecuting attorney, shall, during his continuance in office, reside in the county or district for which he was elected. And the removal by any such officer from the state, circuit, county or district for which he was elected or chosen shall vacate his office.

The constitution and statutory language are explicit, in plain ordinary clear English, in setting forth unequivocally that residing at the seat of government during the term of office, and keeping there the public records, books and papers pertaining to that office is a nondiscretionary duty of holding the office of Governor. "Where a provision of a constitution is clear in its terms and of plain interpretation to any ordinary and reasonable mind, it should be applied and not construed." Syl. Pt. 3, *State ex rel. Smith v. Gore*, 150 W. Va. 71, 143 S.E.2d 791 (1965). "Words used in a state constitution, as distinguished from any other written law, should be taken in their general and ordinary sense." Syl. Pt. 6, *State ex rel. Trent v. Sims*, 138 W. Va. 244, 77 S.E.2d 122 (1953). "Questions of constitutional construction are in the main governed by the same general rules applied in statutory construction." Syl. pt. 1, *Winkler v. State School Building Authority*, 189 W.Va. 748, 434 S.E.2d 420 (1993). "The provisions of the Constitution, the organic and fundamental law of the land, stand upon a higher plane than statutes, and they will as a rule be held mandatory in prescribing the exact and exclusive methods of performing the acts permitted or required." Syl. Pt. 2, *Simms v. Sawyers*, 85 W. Va. 245, 101 S.E. 467 (1919).

Section 1 of Article VII of the West Virginia Constitution uses the word "shall" reside at

the seat of government during their terms of office, keep there the public records, books and papers pertaining to their respective offices. The word shall when used in constitutional provisions has been determined to be used in the mandatory sense and not discretionary sense. "As used in constitutional provisions, the word 'shall' is generally used in the imperative or mandatory sense." Syl. Pt. 3, *State ex rel. Trent v. Sims*, 138 W. Va. 244, 77 S.E.2d 122 (1953). "Courts are not concerned with the wisdom or expediencies of constitutional provisions, and the duty of the judiciary is merely to carry out the provisions of the plain language stated in the constitution." Syl. Pt. 3, *State ex rel. Casey v. Pauley*, 158 W. Va. 298, 210 S.E.2d 649 (1975).

The Supreme Court of Appeals of West Virginia has interpreted Section 1 of Article VII of the West Virginia Constitution to be nondiscretionary constitutional duty of the executive department. This has been the rule of land for over 140 years in this state. 'It was his duty to do so, in fidelity to his oath of office to support the constitution of the State; and the constitution of the State unequivocally requires that he shall reside at the seat of government during his term of office, and keep there the public records of his office, and commands him, as the chief executive officer, in whom is vested the chief executive power, to "take care that the laws be faithfully executed.'" *Slack v. Jacob*, 8 W.Va.612, 657 (1875).

3) A writ of mandamus is available to compel negligent conduct by a governmental official to bring it within compliance with any statutory or constitutional standard. "Mandamus will lie against a State official to adjust prospectively his or her conduct to bring it into compliance with any statutory or constitutional standard." Syl. pt. 2, *Gribben v. Kirk*, 466 S.E.2d 147, 195 W.Va. 488 (1995).

4) No other remedies exist to make Respondent follow and perform the West Virginia statutory and constitutional duties to reside at the seat of government during his term of office, and

keep there the public records, books and papers pertaining to his respective office. Petitioner brought this action in his individual capacity as a citizen and taxpayer, not as an elected official, nor does the law grant a member of the West Virginia Legislature any special privilege over that of a citizen and taxpayer to have the laws followed by an elected official rather than willfully ignored. Further, a future election as a remedy as Respondent asserted, does not provide a remedy for the current neglect of a mandatory statutory constitutional duty by an elected official. If that was the only remedy, then the result would make all mandated duties by elected officials under West Virginia law to be null and void after the elected official is elected to office.

5) Rule 12(b)(6) of the West Virginia Rules of Civil Procedure authorizes the filing of a motion requesting dismissal of a claim or counterclaim for "failure to state a claim upon which relief can be granted." The Supreme Court of Appeals of West Virginia in *Highmark West Virginia, Inc. v. Jamie*, 655 S.E. 2d 509, 221 W.Va. 487 (2007) analyzed Rule 12(b)(6) and set forth the following standard:

"In syllabus point 3 of *Chapman v. Kane Transfer Company*, 160 W.Va. 530, 236 S.E.2d 207 (1977), which holds: "The trial court, in appraising the sufficiency of a complaint on a Rule 12(b)(6) motion, should not dismiss the complaint unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief. *Conley v. Gibson*, 355 U.S. 41, 45-46 [, 78 S.Ct. 99, 102, 2 L.Ed.2d 80, 84] (1957)." Syl. pt. 2, *Sticklen v. Kittle*, 168 W.Va. 147, 287 S.E.2d 148 (1981); syl., *Flowers v. City of Morgantown*, 166 W.Va. 92, 272 S.E.2d 663 (1980). See also, F.D. Cleckley, R.J. Davis, L.J. Palmer, *Litigation Handbook on West Virginia Rules of Civil Procedure* § 12(b)(6) (Juris Pub.2006).

In reviewing a Rule 12(b)(6), dismissal, assistance in appraising the sufficiency of the claim or counterclaim is provided by Rule 8(a)(1) of the West Virginia Rules of Civil Procedure which requires, in a pleading, "a short and plain statement of the claim showing that the pleader is entitled to relief." Subsection (e) of Rule 8 states that each averment of a pleading shall be "simple, concise and direct." As observed in *Scott Runyan Pontiac-Buick, supra*: "Rule 8 of the Rules of Civil Procedure requires clarity but not detail. * * * Under Rule 8, a complaint must be intelligibly sufficient for a circuit court or an opposing party to understand whether a valid claim is alleged and, if so, what it is." 194 W.Va. at 776, 461 S.E.2d at 522. Thus, while bald statements or a carelessly drafted pleading will not survive a Rule

12(b)(6) motion to dismiss, *Fass v. NowSCO Well Service*, 177 W.Va. 50, 52, 350 S.E.2d 562, 564 (1986), a circuit court should not dismiss a claim "merely because it doubts that the plaintiff will prevail in the action." *John W. Lodge Distributing Co. v. Texaco*, 161 W.Va. 603, 605, 245 S.E.2d 157, 159 (1978). The complaint is to be construed in the light most favorable to the plaintiff. *Price v. Halstead*, 177 W.Va. 592, 594, 355 S.E.2d 380, 383 (1987); *Chapman, supra*, 160 W.Va. at 538, 236 S.E.2d at 212."

Petitioner believes that adequate discovery will prove facts in support of Petitioner's Petition for Writ of Mandamus that Respondent isn't following the West Virginia statutory or constitutional mandatory duty that he reside at the seat of government during his term of office, and keep there the public records, books and papers pertaining to his respective office. In support of this, attached hereto and incorporated by reference is "Exhibit A", is a calendar released by the Respondent to the Associated Press that attempted to report his whereabouts for November 2018 through May 2019. On page 3, footnote 1, in Respondent's Memorandum of Law in Support of Respondent's Motion to Dismiss, Respondent asserts that purported "absenteeism" are hearsay statements from online news articles. Respondent seems to acknowledge that proper discovery should proceed to authenticate the facts surrounding Respondent's residency so that the Court can make an informed decision when applying it to the long-held test for residency in West Virginia, as set forth hereinabove.

Petitioner's Petition for Writ of Mandamus was simple, concise, direct, short and a plain statement of the claim showing that the Petitioner was entitled to relief. Petitioner requested that a writ of mandamus be issued henceforth that Respondent meet his nondiscretionary mandatory constitutional and statutory duties, pursuant to Section 1 of Article VII of the West Virginia Constitution and W. Va. Code § 6-5-4, and he be ordered to reside at the seat of government during his term of office, and keep there the public records, books and papers pertaining to his respective office; award costs and grant such other relief as the Court deems

equitable. This court should not dismiss a claim merely because it doubts that Petitioner will prevail in the action after discovery is completed.

⑥ Petitioner is requesting discovery be granted in this matter; an evidentiary hearing before this court without a jury after the discovery has been completed; a finding of facts specially by this Court and a statement separately of its conclusions of law thereon; and a writ of mandamus be issued henceforth that Respondent meet his nondiscretionary mandatory constitutional and statutory duties, pursuant to Section 1 of Article VII of the West Virginia Constitution and W. Va. Code § 6-5-4, and he be ordered to reside at the seat of government during his term of office, and keep there the public records, books and papers pertaining to his respective office; award costs and grant such other relief as the Court deems equitable.

The parties were before this Court at a hearing held on August 27, 2018 in Civil Action Number 18-P-217 on a prior Petition for Writ of Mandamus filed by Petitioner. The aforesaid hearing was set regarding a motion to dismiss by Respondent, based on the grounds concerning Petitioner's failure to provide notice to Respondent pursuant to W. Va. Code § 55-17-3 et al., and a motion to compel discovery filed by Petitioner against Respondent.

At the aforesaid hearing, the Court appeared concerned about how it could enforce an Order by the Court against Respondent. Petitioner would first advise the Court that both parties are under an obligation to follow any Order issued by this Court. If a party fails to abide by an Order of the Court, then they are subject to contempt of a Court Order and various civil sanctions.

Alternatively, the Court may find, based on the facts and conclusion of law, at the evidentiary hearing in this matter that Respondent has an ongoing "other disability" of holding the office of Governor and until the "other disability" is removed then he shall not act as Governor.

Section 1 of Article VII of the West Virginia Constitution provides as follows:

7-16. Vacancy in governorship, how filled.

In case of the death, conviction or impeachment, failure to qualify, resignation, or other disability of the governor, the president of the Senate shall act as governor until the vacancy is filled, or the disability removed; and if the president of the Senate, for any of the above named causes, shall become incapable of performing the duties of governor, the same shall devolve upon the speaker of the House of Delegates; and in all other cases where there is no one to act as governor, one shall be chosen by joint vote of the Legislature. Whenever a vacancy shall occur in the office of governor before the first three years of the term shall have expired, a new election for governor shall take place to fill the vacancy.

The Court, after the conclusion of the evidentiary hearing in this matter, may find that Respondent's failure to comply with a mandatory constitutional duty is a "other disability" under Section 1 of Article VII of the West Virginia Constitution. Respondent could be granted a certain amount of days to remove this "other disability" by residing at the seat of government during his term of office, and keep there the public records, books and papers pertaining to his respective office. If Respondent doesn't remove the disability then the president of the Senate shall act as governor until the disability has been removed, pursuant to Section 1 of Article VII of the West Virginia Constitution.

WHEREFORE, Petitioner respectfully requests that this Court deny Respondent's Motion to Dismiss for the aforesaid reasons and the Court advance this action by granting the discovery requests by Petitioner.

Dated this 23rd day of May 2019.

G. Isaac Sponaugle, III
Petitioner

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G. Isaac Sponaugle, III
State Bar #9720
Petitioner

CERTIFICATE OF SERVICE

Petitioner does certify that a true copy of the foregoing *Petitioner's Response to Respondent's Motion to Dismiss* was served upon Respondent by depositing a true copy of same with the United States Postal Service, postage prepaid, to counsel for Respondent, Michael W. Carey and David R. Pogue, addressed to them at P.O. Box 913, Charleston, West Virginia 265323, on this 23rd day of May 2019.



Petitioner

"Exhibit A"

November 2018

SUNDAY	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY
Oct 28	29	30	31	NOV 1	2	3
				Coalfields	Eastern Panhandle 10:00am Cacapon Press Conference (Cacapon State park) 2:00pm Event	Coalfields
4	5	6	7	8	9	10
		Charleston ELECTION DAY 10:00am Voting 6:00pm Mansion			10:00am WVU for Chambers event (Morgantown, WV) 2:30pm Veterans Day Video Shoot	10
11	12	13	14	15	16	17
		Mansion decorating 9:00am WV Youth Summit on Opioid Awareness (Charleston Coliseum)			10:00am State Police Cadet Graduation (Riggleman Hall at the University of Charleston)	
18	19	20	21	22	23	24
	11:00am Justice Family Xmas Card shoot (Mansion)	1:00pm Greenbrier County Grant Awards (O School Conference)		Thanksgiving		
		1:45pm Kenzie Bass Interview (O School)				
25	26	27	28	29	30	Dec 1
			10:30am Wheeling Grant (Wheeling City Hall)	6:30pm Basketball game (Home)		

December 2018

December 2018

SUNDAY	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY
Nov 25	26	27	28	29	30	Dec 1
						5:30pm Tree Lighting Tentative
2	3	4	5	6	7	8
	12:00pm Huntington Press Conference (Roast, 800 20th St, Huntington, WV)	2:00pm Charleston Grants	5:55pm Joyful Night Ceremony (Capitol)	6:30pm Basketball Game, Home	10:00am Speak to Chamber of 6:30pm Basketball game (Home)	
9	10	11	12	13	14	15
	1:30pm BUILD Grant Press Conference (Washington, D.C.)			11:30am Parkersburg family	10:00am Crumpler Santa	
16	17	18	19	20	21	22
	2:00pm Do not schedule 6:00pm Basketball game (Home - Christmas Tournament)	6:00pm Basketball game (Home - Christmas Tournament)		10:00am RISE Key Turnover Event (Charmco)	2:00pm Basketball Game (Wheeling Park)	
23	24	25	26	27	28	29
	Christmas			8:00am Basketball trip (KSA Christmas Tournament)	8:00am Basketball trip (KSA Christmas Tournament)	
30	31	Jan 1, 19	2	3	4	5

January 2019

SUNDAY	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY
Dec 30	31	Jan 1, 19	2	3	4	5
			6:30pm Basketball game (Home)		6:30pm Basketball game (Home)	
6	7	8	9	10	11	12
		10:00am Revenue Press Conference	6:00pm State of the State	9:00am Teacher of the Year	6:30pm Basketball Game (Princeton)	
				10:00am State Journal		
				11:00am Hoppy		
				11:30am Kent Carper		
				1:00pm Opioid disposal		
13	14	15	16	17	18	19
		9:00am County 9:45am Meetings	Mark Curtis Interview (Mansion)	6:30pm Basketball game (Home)		
		11:00am Cabinet				
		1:00pm Marshall				
		1:15pm John Crites				
20	21	22	23	24	25	26
		9:00am FYI - Mansion Tour/Youth in Government	9:00am Oil & Gas Association's Winter Tour/Mercer County Olive Event	10:00am Pipestem for upgrade	10:00am FYI - Mansion Tour/New River	
		10:30am ABC Mount Olive Event	10:15am Photo with	1:00pm FYI - Mansion Tour/Mercer County	1:00pm Meeting (Mansion)	
			6:30pm Basketball Game	1:30pm FYI - Mansion	6:30pm Basketball game	
27	28	29	30	31	Feb 1	2
		Catholic Schools Week photo request anytime				
		9:00am FYI - Cabinet Meeting (Governor's Meeting (Governor's	9:00am FYI - Mansion Tour/New River	8:00am FYI - Cabinet Meeting (Governor's		
		12:00pm Big Atlantic Classic Banquet	11:00am Mining	11:00am Board of public		
		(Bluefield)	12:00pm Lunch with pat	12:30pm Meeting with		
			1:00pm Wheeling			

Governor Event

February 2019

February 2019							March 2019												
Su	Mo	Tu	We	Th	Fr	Sa	Su	Mo	Tu	We	Th	Fr	Sa						
3	4	5	6	7	1	2	3	4	5	6	7	8	9						
10	11	12	13	14	15	16	10	11	12	13	14	15	16						
17	18	19	20	21	22	23	17	18	19	20	21	22	23						
24	25	26	27	28	29	30	24	25	26	27	28	29	30						
31							31												
SUNDAY	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY		SATURDAY												
Jan 27	28	29	30	31	Feb 1		2												
					Catholic Schools Week pho		2:30pm National Guard												
					11:00am Art contest		Change of Command												
					11:45am Skype		5:40pm Basketball Game												
					12:30pm Chelsea Ruby		1:00pm Black History												
					7		9												
					Veterans Visibility Day		DO NOT SCHEDULE												
					11:00am Lunch/Meeting		DO NOT SCHEDULE												
					12:00pm Veterans		7												
					12:30pm USGA Skype		8												
					6:30pm Basketball Game		DO NOT SCHEDULE												
					6		9												
					Veterans		DO NOT SCHEDULE												
					Visibility Day		DO NOT SCHEDULE												
					10		10												
					DO NOT SCHEDULE		DO NOT SCHEDULE												
					11		11												
					10:00am FYI - Mansion		11												
					Tour/New River		12												
					12:30pm Association of		12												
					1:30pm FYI - Mansion		13												
					6:30pm Basketball Game		13												
					12		14												
					10:00am Bob Murray		14												
					(Mansion)		15												
					2:00pm Arts Day		15												
					1:30pm Occupational		16												
					6:30pm Basketball Game		16												
					11		17												
					10:00am FYI - Mansion		17												
					Tour/Ravenswood		18												
					High School		18												
					8th Grade		19												
					1:00pm FYI - Mansion		19												
					Tour/Delegate		20												
					9:30am FYI - Mansion		20												
					Tour/Ravenswood		21												
					High School		21												
					8th Grade		22												
					10:30am FYI - Mansion		22												
					Tour/Renee Schneid -		22												
					8th Grade		23												
					10:00am FYI - Mansion		23												
					11:00am History Day		23												
					11:30am Meet and		23												
					9:00am FYI - Mansion		24												
					Tour/Sherry Smith		24												
					10:00am Call		25												
					10:00am FYI - Mansion		25												
					7:00pm Basketball Game		26												
					9:00am FYI - Mansion		26												
					Tour/Youth in		26												
					12:00pm School for the		27												
					Deaf and Blind sing		27												
					to the Governor		28												
					10:00pm FYI - Mansion		28												
					Tour/Sean		28												
					8:00pm Meeting in CRW		Mar 1												

March 2019

SUNDAY	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY
Feb 24	25	26	27	28	Mar 1	2
3	4 10:30am MMPI press 11:00am Rebecca - 12:00pm National 12:30pm Private bill ↴	5 11:00am Basketball Game (Charleston Civic Center)	6 11:00am Secondary Roads Press 12:00pm TENATIVE-Bill 12:30pm	7 11:00am Toyota Event (Buffalo Plant)	8 2:00pm Sportsman Award private 2:30pm Meeting with 3:00pm Horse bill	9
10	11	12	13 11:00am Secondary Roads Press 12:00pm TENATIVE-Bill 12:30pm	14 11:00am Toyota Event (Buffalo Plant)	15 2:00pm Sportsman Award private 2:30pm Meeting with 3:00pm Horse bill	16
17	18	19 2:00pm DOH Meeting (Culture Center)	20	21 9:00am Meeting with Japanese Ambassador	22 1:00pm EQT Students of Excellence	23
24	25	26	27 11:00am Bill Review (Mansion) 2:00pm SB 622 Private Signing Ceremony	28 11:00am Larry Puccio meeting with 3:00pm State Police 6:30pm	29 30	30
31	Apr 1	2	3	4	5	6

April 2019

May 2019

SUNDAY	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY
Apr 28	29	30	May 1	2	3	4
			1:00pm King Coal Highway Groundbreaking (Bluefield at the Bridge to Nowhere)	2:00pm Revenue Press Conference	9:30am Golden Horseshoe Event	May 2019
5	6	7	4:30pm Meeting with Dr. Paine re: education survey	1:00pm Tentative - T&T Muddy Creek Plant	6:00pm Dinner	June 2019
12	13	14	12:00pm Meeting (Mansion)	1:30pm Rail Trail Acquisition Press Event (Clay County)	11:00am Wind Farm Press Event (Mineral)	
			1:30pm HHH Check Presentation	2:00pm CDBG Grant	3:00pm Hollywood	
			2:00pm Employee	6:00pm Dinner		
19	20	21	15	16	17	18
			9:00am National Asn. of State Technology Directors (Greenbrier)	10:30am Aviagen Chicken Barn Grand Opening (Monroe County)		
			11:30am Press Conference with Mary			
			1:00pm DOJ Press Event			
26	27	28	22	23	24	25
Vandalia (Capitol)	11:00am Undeclared Veterans Ceremony (Institute)	2:00pm Union Soldiers and Sailors	HOLD DAYTIME Legislative Interims	5:00pm HOLD Dinner	Vandalia (Capitol)	
			11:00am Rob McNally-EQT	county revisit for road conditions (Marshall county courthouse)		
			1:00pm Steve White			
29	30	31	29	30	31	Jun 1
			12:30pm BIC Luncheon (Mansion)	12:30pm BIC Luncheons (Mansion)		
Governor Event						

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JAMES CONLEY JUSTICE, II,
Governor of the State of West Virginia,
Respondent.

**MOTION TO COMPEL RESPONDENT TO ANSWER
PETITIONER'S FIRST COMBINED DISCOVERY DIRECTED TO RESPONDENT**

Comes now your Petitioner and respectfully moves this Court, pursuant to Rule 37 of the West Virginia Rules of Civil Procedure, to compel Respondent to answer Petitioner's First Combined Discovery Directed to Respondent.

On February 25, 2019, Respondent was mailed Petitioner's First Combined Discovery Directed to Respondent. Respondent, in a subsequent filing, asserted that it received the same on February 28, 2019. Pursuant to Rules 33, 34 and 36 of the West Virginia Rules of Civil Procedure, Respondent was required to answer and respond to the aforesaid discovery requests within 30 days of service of the same.

Respondent filed a motion entitled Respondent's Motion to Stay Discovery on or about March 1, 2019 therein requesting that this Court enter an Order granting a stay of the discovery, pursuant to Rule 26(c) of the West Virginia Rules of Civil Procedure. That request was not granted by the Court.

As of Thursday, May 23, 2019, Respondent has failed to provide and continues to refuse to provide any answers to Petitioner's First Combined Discovery Directed to Respondent.

WHEREFORE, for the aforesaid reasons, Petitioner is seeking an Order from the Court to compel an answer by Respondent to Petitioner's First Combined Discovery Directed to Respondent. Additionally, to sanction Respondent and require Respondent to pay the reasonable expenses incurred in obtaining the order, including attorney fees and general relief.

Dated this 23rd day of May 2019.

G. Isaac Sponaugle, III
Petitioner

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G. Isaac Sponaugle, III
State Bar #9720
Petitioner

CERTIFICATE OF SERVICE

Petitioner does certify that a true copy of the foregoing *Motion to Compel Respondent to Answer Petitioner's First Combined Discovery Directed to Respondent* was served upon Respondent by depositing a true copy of same with the United States Postal Service, postage prepaid, to counsel for Respondent, Michael W. Carey and David R. Pogue, addressed to them at P.O. Box 913, Charleston, West Virginia 265323, on this 23rd day of May 2019.



Petitioner

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v.

Civil Action Number: 18-P-442
Honorable Charles E. King, Judge

JAMES CONLEY JUSTICE, II,
Governor of the State of West Virginia,
Respondent.

-NOTICE OF HEARING-

To: James Conley Justice, II

Please take notice that on **Wednesday, June 5, 2019, at 11:00 am**, or as soon thereafter as counsel can be heard, at the Kanawha County Courthouse; the undersigned will bring the above matter on for a hearing for the relief requested in *Motion to Compel Respondent to Answer Petitioner's First Combined Discovery Directed to Respondent*.

Dated this 23rd day of May 2019.

G. Isaac Sponaugle, III
Petitioner

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G. Isaac Sponaugle, III
State Bar #9720
Petitioner

CERTIFICATE OF SERVICE

Petitioner does certify that a true copy of the foregoing *Notice of Hearing* was served upon Respondent by depositing a true copy of same with the United States Postal Service, postage

prepaid, to counsel for Respondent, Michael W. Carey and David R. Pogue, addressed to them at
P.O. Box 913, Charleston, West Virginia 265323, on this 23rd day of May 2019.



Petitioner